IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL WRIT PETITION NO.1524 OF 2004

Mukesh Bapurao Bhalerao ... Petitioner

V/s.

The State of Maharashtra & Ors. ... Respondents

Mr.N.N. Gawankar with Arfar A.E.A. Sait for Petitioner
Mr.D.R. More, APP, for Respondents

CORAM: **A.M. KHANWILKAR, J.**

DATED: **SEPTEMBER 7, 2004**

P.C.:

. Rule. Rule made returnable forthwith, by consent. Mr.More, waives notice for respondents. As a short question is involved, the petition is taken up for final disposal, by consent.

2. The only grievance in this Petition is that the authorities have wrongly rejected the petitioner’s application for being released on furlough leave. The reason recorded for rejection of the petitioner’s application is two-fold. The first reason is that the petitioner had overstayed on the earlier occasions for 10 days and 102 days respectively. Secondly, that there is adverse report about the conduct of the petitioner. According to the Petitioner, both these grounds cannot be sustained. It is stated that in so far as delay in reporting on earlier two occasions is concerned, the petitioner was duly punished as per the provisions of

the Prisons Act in that behalf by forfeiting earned remission of the petitioner. In so far as the adverse report about the conduct of the Petitioner is concerned, it is contended that there is no basis for such report. Moreover, the report merely mentions that the petitioner is of cruel and revengeful nature. This opinion is recorded on the basis of the statements of certain persons.

3. Having considered the rival submissions and on going through the record, I find substance in the grievance made in this petition that the petitioner's application has been rejected on improper considerations. In so far as the ground of delay in reporting on the earlier occasions is concerned, it is rightly submitted that the Petitioner has already been punished for that lapse under the provisions of the Prisons Act and that once again cannot be the basis for rejection of the furlough leave application. The Petitioner was released on an earlier occasion in the year 1999 for 14 days and had reported 10 days late and once again when released in May 2001 for 15 days, he had reported late by 102 days. In so far as the second occasion is concerned, the Petitioner has explanation to offer and has mentioned that the authorities have already punished the Petitioner for late reporting. If it is so, that ought not to be the basis for rejection

of the furlough leave which, it is well settled, is held to be right of a prisoner.

4. In so far as the conduct of the Petitioner is concerned, the report of the police in that behalf will be of no avail in the fact situation of the present case. Merely because the petitioner is suffering sentence in relation to serious offence and has been found guilty in commission of that offence cannot be the basis to hold against him that he is of cruel and revengeful nature. The police authorities have indeed relied on statements of some persons. However, to my mind, merely the nature of the Petitioner cannot be the basis for not recommending the release on furlough leave; more particularly when the Petitioner has been released on earlier two occasions without any adverse incident except of overstaying the leave period.

5. Taking an overall view of the matter and in view of the settled legal position in the reported decisions which are pressed into service on behalf of the petitioner, this petition ought to succeed. The Petition is allowed in terms of prayer clause (b) and a direction is issued to the authorities to release the petitioner on furlough leave on such terms and conditions as it may deem appropriate so as to ensure that the Petitioner does not overstay the leave period.

5. Rule made absolute in the above terms. No order as to costs.